

Law Offices

HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202
202-955-3000
FAX 202-955-5564
<http://www.hklaw.com>

Atlanta	Northern Virginia
Boca Raton	Orlando
Fort Lauderdale	San Francisco
Jacksonville	St. Petersburg
Lakeland	Tallahassee
Miami	Tampa
New York	West Palm Beach

April 21, 1998

MARVIN ROSENBERG
202-457-7147

DOCKET FILE COPY ORIGINAL

VIA HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

APR 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of
Policies and Rules for the
Direct Broadcast Satellite Service,
IB Docket No. 98-21

Dear Ms. Salas:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), are an original and four copies of its Reply Comments in the above-captioned Notice of Proposed Rulemaking.

Should there be any questions, please communicate with the undersigned.

Very truly yours,



Marvin Rosenberg
Counsel for United States Satellite
Broadcasting Company, Inc.

mr;ewd
Enclosures

024

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policies and Rules for the) IB Docket No. 98-21
Direct Broadcast Satellite Service)
)

**REPLY COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

INTRODUCTION

United States Satellite Broadcasting Company, Inc. ("USSB"), by its counsel, hereby submits its reply comments in response to the *Notice of Proposed Rule Making* ("Notice") released by the Commission in the above-captioned proceeding on February 26, 1998.

Commenters universally agree that the Commission's flexible regulatory approach for DBS systems has facilitated its growth. As a result, DBS service has become the most effective multichannel video programming distributor ("MVPD") competitor to incumbent cable systems. However, as DirecTV appropriately cautions, the "industry remains a long way from achieving a competitive position capable of eroding the market power of the dominant cable industry."¹ Consequently, while there is strong support for the Commission's efforts to eliminate unnecessary regulation by streamlining and simplifying its rules governing DBS service, in so doing, there is general insistence that, when consolidating the DBS service rules with the rules for other satellite

¹ DirecTV Comments at 3.

services, the Commission ensure that the resulting rules maintain separate DBS frequency allocations and full protection from interference for the DBS service.

Likewise, there is agreement that the public interest generally will best be served if the Commission continues to address specific competition and public interest concerns on an *ad hoc*, case-by-case basis, as it has historically done. As the Commission has observed on numerous occasions, and as commenters in the rulemaking recognize, existing antitrust law and the opportunity for Commission review of a proposed DBS assignment or transfer of control under the public interest standard are sufficient to safeguard competition.

With regard to proposals to change the geographic service requirements, USSB joins DirecTV and EchoStar in their opposition to the undue expansion of the geographic service requirements and against the adoption of an off-shore states policy. In adopting any modifications to the geographic service requirements, the Commission must take into consideration the practical consequences of its action. Under the Commission's proposal, the renewal or extension of pre-existing authorizations would automatically trigger additional geographic service obligations. USSB currently provides DBS service from 101°W.L. and has authority to construct and launch satellites with three transponders at 110°W.L. and eight transponders at 148°W.L. USSB has planned for service to Hawaii and Alaska in its future satellites, and is sensitive to the needs of these states.

As DirecTV points out, in promulgating the geographic service rules in 1995, the Commission deliberately provided existing systems the flexibility to phase in service to Alaska and Hawaii over time. The resulting rules struck a balance between promoting service to subscribers in Alaska and Hawaii and the need to implement regulations that did not unduly

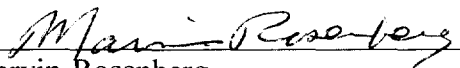
constrain the development and proliferation of DBS service. For existing DBS permittees and licensees, the Commission required DBS operators to relinquish their western channel assignments if they did not serve Alaska and Hawaii before the expiration of their current authorization. However, if the Commission were to apply the requirements to eastern licensees applying for renewals, it would be broadening the scope of the requirements and upsetting the balance struck in the 1995 rules. The expansion of geographic service requirements for pre-January 19, 1996 licensees is feasible only in instances where such licensees are operating satellites that possess the technical capability of serving Alaska and Hawaii. DBS satellites typically have a longer useful life than their license terms and existing satellites should be allowed to continue in use without additional service requirements. Extending the geographic service requirements to pre-existing licensees seeking a renewal or extension, where satellites are not capable of serving Alaska and Hawaii, would effectively force the licensee to shut down its eastern satellites at the end of the license term. Such a policy would effectively expand the geographic service requirements in a way that providers with existing satellites could not possibly have considered in deciding to go forward with their present systems. Equally important, such a rule would only succeed in hindering competition to cable because of the time and cost involved in constructing new satellites that would be necessary to provide service to Alaska and Hawaii.

Finally, USSB shares Microcom's concern that consumers should not be required to buy or lease two or more devices in order to receive DBS signals from the same orbital location. As Microcom recognized, such a situation not only increases consumer costs but inhibits competition among DBS providers and undermines competition between cable and DBS. Accordingly, USSB joins Microcom in its recommendation that the Commission require DBS licensees located at the

same orbital locations to co-ordinate the development of their systems, such as USSB and DirecTV have done at 101°W.L., so that consumers will have the ability to receive DBS services from all DBS providers at a common orbital location. As USSB explained in a prior proceeding, adoption of such a policy "will make certain that DBS consumers can receive the maximum service from any one orbital location and that DBS consumers need not choose DBS providers at an orbital location on the basis of equipment pricing or technological barriers."² The availability of competing service providers at the same orbital location will promote competition between DBS providers as well as between DBS service and cable providers, assure the wide availability of DBS, and will help accomplish the goal of making DBS available in remote areas.

Respectfully submitted,

**UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.**



Marvin Rosenberg

Randall W. Sifers*

HOLLAND & KNIGHT LLP

2100 Pennsylvania Ave., N.W.

Suite 400

Washington, D.C. 20037-3202

202-955-3000

Its Counsel

* Admitted Only in Maryland; Supervision by
Marvin Rosenberg, a Member of the D.C. Bar

April 21, 1998

WAS1-344079

² *In re* Commercial Availability of Navigation Devices, CS Docket No. 97-80, FCC 97-53 (rel. Feb. 20, 1997), Comments of United States Broadcasting Company, Inc., at p.2 (May 16, 1997).